

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CLAYTON SMITH,

Petitioner,

v.

Civil Action No. 2:06cv99

DOMINIC A. GUTIERREZ,

Respondent.

ORDER

It will be recalled that on December 27, 2007, Magistrate Judge James E. Seibert filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objections to the Magistrate Judge's Report and Recommendation on January 7, 2008.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition, filed pursuant to 28 U.S.C. §2241, wherein Petitioner seeks an order directing the Bureau of Prisons ("BOP") to transfer him to a Community Corrections Center ("CCC") for the last six months of his term of imprisonment, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation, as was the Respondent's Motion to Dismiss as Moot, which was filed as part of the Respondent's Response to Public Order on November 6, 2007.

Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects

the law applicable to the facts and circumstances before the Court in this action. Upon review of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not already fully considered and addressed by Magistrate Judge Seibert. As more fully set forth in Magistrate Judge Seibert's Report and Recommendation, the Court finds that the Petitioner has already been granted the relief sought in the case, that is, proper consideration of his CCC placement under §3621(b), and that he is not entitled to an Order directing the BOP to immediately transfer him to a CCC. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that Respondent's Motion to Dismiss as Moot be, and the same hereby is, **GRANTED**. It is further

ORDERED that the Petitioner's Application for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241 shall be, and the same hereby is, **DENIED** and **DISMISSED with prejudice**. It is further

ORDERED that the Petitioner's Motion to Compel, filed on March 19, 2008, shall be, and the same hereby is **DENIED** as moot. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Respondent. It is further

ORDERED that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30)

days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: July 1 , 2008

/s/ Robert E. Maxwell
United States District Judge